United Nations CED/C/SR.139

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
8 September 2015

Original: English

Committee on Enforced Disappearances
Ninth session

Summary record (partial)* of the 139th meeting
Held at the Palais des Nations, Geneva, on Monday, 7 September 2015, at 10 a.m.

Temporary Chairperson: Mr. Walker (Office of the United Nations High Commissioner for Human Rights)
Chairperson: Mr. Decaux

Contents

Opening of the session

Solemn declaration by the newly elected members of the Committee

Election of officers

Adoption of the agenda

Minute of silence in remembrance of victims of enforced disappearances

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-15177 (E) 081915 080915

Please recycle

The meeting was called to order at 10.05 a.m.

Opening of the session

1. **The Temporary Chairperson** declared the ninth session of the Committee on Enforced Disappearances open.

Statement by the United Nations High Commissioner for Human Rights

2. **Mr. Al Hussein** (United Nations High Commissioner for Human Rights) said that he wished to begin by expressing his admiration and support for the work that the Committee had done since its establishment four years previously. Although the Convention had its roots in the horrific practices of dictatorships in Latin America in the 1970s and 1980s, it was still extremely relevant, not least because people continued to be disappeared in many countries with the direct or indirect involvement of the State.

3. New patterns of enforced disappearance were emerging, with new types of perpetrators targeting a much broader range of victims. There were large numbers of disappearances in States that were experiencing internal conflict, such as the Syrian Arab Republic and Iraq. In other States, practices such as secret detention and extraordinary renditions were used to perpetrate enforced disappearances in the name of fighting terrorism, in clear violation of the Convention and of the commitments made by States parties.

4. People were also being disappeared on a massive scale by non-State actors, including paramilitary groups, militias and organized criminal gangs, sometimes with the connivance or tolerance of the State. In several of the world's most brutal and chaotic conflicts, however, abuses that were perpetrated without the connivance of the State were so grave that they had to be considered tantamount to enforced disappearances. Non-State actors might be motivated by the goal of wiping out religious or social diversity or by the urge to seize land and goods from their victims; the so-called ISIL group was just one example in that regard. The persons who had framed the Convention had been prescient in including article 3, which held States parties responsible for investigating acts that were tantamount to enforced disappearances.

5. In addition to new patterns of enforced disappearance and new types of offenders, there were new types of victims, notably migrants, whose rights the international community was failing to protect. While the international community's attention was being drawn to the situation in the Mediterranean and the Balkans, it should not be forgotten that similar situations were occurring all over the world. Migrants too often met with exploitation, discrimination and violence, as well as harshly enforced refusals to permit entry. They endured unbelievable suffering and ran a high risk of becoming victims of severe human rights violations at the hands of the authorities of the countries that they tried to enter. In many cases, they fell into the hands of human traffickers. He therefore wished to exhort the Committee to continue to make active use of article 16 of the Convention, which forbade the expulsion, refoulement, surrender or extradition of persons, including migrants, who could be in danger of enforced disappearance.

6. New challenges demanded new strategies for fighting impunity, protecting disappeared persons and their families, and strengthening the guarantees provided by the rule of law. The Convention served as a sound foundation upon which to undertake those tasks, and the Committee's efforts to secure its implementation were vital. As the newest of the treaty bodies, the Committee had shown a remarkable ability to innovate and was making the best use of such tools as the Convention's urgent action

procedure under article 30. He was heartened by the Committee's contemporary reading of the Convention and by its decision to devote two thematic discussions to non-State actors. He wished to encourage the Committee to maintain its focus on that issue in its future proceedings.

7. Victims increasingly counted on the support of the Committee in the search for their loved ones and in their efforts to secure the prosecution and punishment of perpetrators and to pierce the veil of impunity and obtain reparation. Despite the fact that many family members were too afraid or did not know how to seek help from international mechanisms, the Committee had received a growing number of requests to help find people who had disappeared. Thanks to the Committee's responsiveness, five persons had been located in 2015. Two, sadly, had been found dead, but three others had been discovered in detention and one of those had since been released. For five families, at least, the unspeakable anguish of not knowing the fate of their loved ones had come to an end.

8. The Committee's work could literally be life-saving, and its mandate was extremely sensitive, which was why it was essential for members to meet the highest standards of ethics, competence, independence and impartiality, as required by article 26 of the Convention. The Committee had been exemplary in swiftly adopting the Addis Ababa guidelines in 2012, and the opening of the session provided a timely opportunity to reflect on their relevance. He wished the Committee well in the challenging work that lay ahead and looked forward to receiving updates on its discussions.

The meeting was suspended at 10.15 a.m. and resumed at 10.20 a.m.

Solemn declaration by the newly elected members of the Committee

9. In accordance with rule 11 of the Committee's rules of procedure, **Ms. Galvis Patiño** and **Mr. Figallo Rivadeneyra** made the following solemn declaration:

> "I solemnly declare that I shall perform my duties and exercise my powers as a member of the Committee on Enforced Disappearances independently, objectively, honourably, faithfully, impartially and conscientiously."

Election of officers

10. In accordance with rule 15 of the Committee's rules of procedure, Mr. Emmanuel Decaux (France) was re-elected Chairperson of the Committee. Ms. Suela Janina (Albania) was re-elected Vice-Chairperson and Mr. Santiago Corcuera Cabezut (Mexico) and Mr. Kimio Yakushiji (Japan) were elected Vice-Chairpersons. Mr. Juan José López Ortega (Spain) was elected Rapporteur.

11. *Mr. Decaux took the Chair.*

Adoption of the agenda

12. *The provisional agenda (CED/C/9/1) was adopted without amendment.*

Minute of silence in remembrance of victims of enforced disappearances

13. *At the invitation of the Chairperson, the members of the Committee observed a minute of silence in remembrance of victims of enforced disappearances.*

The discussion covered in the summary record ended at 10.35 a.m.

United Nations CED/C/SR.140

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
11 September 2015

Original: English

Committee on Enforced Disappearances
Ninth session

Summary record of the 140th meeting
Held at the Palais des Nations, Geneva, on Monday, 7 September 2015, at 3 p.m.

Chairperson: Mr. Decaux

Contents

Consideration of reports of States parties to the Convention

Initial report of Iraq

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-15293 (E) 110915 110915

Please recycle

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Iraq (CED/C/IRQ/1; CED/C/IRQ/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Iraq took places at the Committee table.*

2. **Mr. Ismail** (Iraq), introducing the initial report of Iraq (CED/C/IRQ/1), said that the report had been drafted on the basis of information gathered through a participatory process led by a committee comprising the Minister of Human Rights and other senior government officials. Various ministries as well as representatives of the Kurdistan Region had participated in the drafting process, and extensive consultations had been held with government agencies, NGOs and academics active in the field of human rights. Most of the observations received had been reflected in the final report.

3. Since the fall of the regime of Saddam Hussein in 2003, the Government of Iraq had been making great efforts to curb violence in the country and ensure respect for the rule of law and for civil liberties and human rights. Notwithstanding the difficulties it faced during the transitional period after the dictatorship, his Government recognized its obligation to promote and protect human rights and was working to incorporate international human rights standards into the country's legal system.

4. Enforced disappearance had been one of the main instruments of oppression used by the dictatorial regime from 1968 to 2003. Thousands of Iraqi citizens had been arrested on the basis of their political, ethnic or religious affiliation and had never been heard from again. International authorities such as the Special Rapporteur on the situation of human rights in Iraq and the Working Group on Enforced or Involuntary Disappearances had reported on the widespread phenomenon of enforced disappearance in the country.

5. In 2012, the Government had established a committee to look into suspected cases of enforced disappearance and provide documentary evidence to the Working Group. In the light of the seriousness of the human rights abuses perpetrated during the dictatorship, a number of transitional justice bodies had been set up to address that legacy. Numerous laws had been enacted in such areas as the treatment of political prisoners, the protection of mass graves and the payment of compensation to the families of the victims.

6. The Iraqi High Criminal Court played an important role in inquiries into cases of enforced disappearance and other serious crimes committed during the dictatorship. The definitions of such crimes as set out in the national legal system were consistent with those contained in the Rome Statute of the International Criminal Court. The High Criminal Court considered enforced disappearance to be a crime against humanity and it had already dealt with a number of such cases. For example, it had tried and convicted several members of the former regime for their participation in the Anfal campaign in 1988. Baath Party officials had also been convicted for using enforced disappearance as a means of suppressing the country's other secular as well as religious political parties.

7. The Government remained committed to human rights although current political circumstances and the extreme violence engulfing the country had led to delays in its reporting to international human rights institutions. His Government hoped that the international community would show determination in combating terrorism and

protecting minority ethnic groups in Iraq. The people of Iraq had paid a high price in fighting for their rights; they sought not only freedom but also security.

8. His Government had thoroughly looked into the matters raised in the Committee's list of issues (CED/C/IRQ/Q/1) and was resolved to fulfil its obligations despite the tremendous challenges it faced. His Government was grateful to the Committee and to civil society organizations for their work, which would help the country to overcome the remaining challenges.

9. **Mr. Huhle** said that the challenges posed by the current situation made it difficult for the Committee to know what was really happening in the country. He therefore asked the delegation to alert the Committee if any of the information cited was not up to date. He requested clarification about the status of the draft bill to combat enforced disappearance, as the Committee had received reports that the bill had been withdrawn after the recent reported dissolution of the Ministry of Human Rights.

10. He asked whether the Government intended to make the declarations provided for in articles 31 and 32 of the Convention, which related to the Committee's competence to receive and consider individual communications. It was not clear to him whether or not the provisions of the Convention could be directly applied by the courts. The delegation should explain the process for incorporating the Convention into national legislation.

11. He requested further information about the national mechanism for the filing of complaints through the Office of the United Nations High Commissioner for Human Rights referred to in the written replies to the list of issues (CED/C/IRQ/Q/1/Add.1). He wished to know specifically which authorities were responsible for handling requests for urgent action submitted to the State party by the Committee pursuant to article 30 of the Convention.

12. He wished to know the current status of the Ministry of Human Rights, which seemed to be the principal body for dealing with questions of enforced disappearance and handling requests for urgent action. If that Ministry no longer existed, the Committee needed to know which authorities had taken over its functions.

13. He asked if the bill to combat enforced disappearance, which set out a definition of enforced disappearance that was consistent with the definition under the Convention, had been passed into law. The definition of enforced disappearance under current Iraqi law did not accord with the Convention, as it did not distinguish between enforced disappearance and other situations involving missing persons. He therefore wished to know whether, under the new law, a distinction would be made between isolated acts of enforced disappearance and repeated or widespread acts — which could constitute crimes against humanity — so that appropriate prosecution could be sought and penalties imposed. Also, once adopted, could the law on enforced disappearance be repealed by other legislation?

14. Turning to the issue of statistics on enforced disappearance, he said that gathering data was difficult in situations such as the one in Iraq, given, for instance, the lack of access to areas under ISIL control. However, the Government must make every effort to get a true picture of the situation throughout the country, including the number of cases of enforced disappearance in occupied areas. He wondered why the Government had not been able to collect information on cases of enforced disappearance in the Kurdistan region, noting that there was a representative of that region in the delegation. Such data should be obtained and should be included as an integral part of the State party's report to the Committee.

15. With regard to the more than 10,000 cases of enforced disappearance that had occurred before 2003, he wished to know what steps the Government had taken to provide effective remedies to the victims and their families. Further details were needed about the 2,735 missing persons referred to in paragraph 9 of the replies to the list of issues. Did "missing persons" mean victims of enforced disappearance? Did the term include persons missing in combat? Greater specificity was needed, as a database lacking disaggregated statistics on missing persons would not provide a sufficient basis on which the Committee could formulate recommendations. He also wished to know how many of the persons listed as missing had subsequently been found alive, how many had been found dead and how many were still missing.

16. He said he was grateful to the State party's permanent mission in Geneva for its assistance in transmitting the Committee's requests for urgent action to the Government and encouraged the Government to continue its collaboration with the Committee under article 30 of the Convention. He wondered whether the requests for urgent action currently before the Committee formed part of the statistics on enforced disappearance that had been provided to it by the State party.

17. Lastly, he wished to know whether senior officials currently working in the various State-run security forces were liable to criminal prosecution for acts of enforced disappearance. He would welcome information on cases involving senior officials who had been tried or convicted of enforced disappearance under the Criminal Code.

18. **Mr. Hazan**, referring to paragraph 15 of the replies to the list of issues, said that he wished to know if the bill on enforced disappearance covered anyone committing the offence — whether or not the perpetrator was an Iraqi national — and if any of the conditions listed in article 19 of the bill would be sufficient for the law to apply.

19. Noting that there were no reported cases of enforced disappearance committed by the Iraqi army, he wondered whether any record had been kept of arrests made without a warrant by the military or other security forces on suspicion of terrorism, as such arrests had been referred to in a number of requests for urgent action submitted to the Committee. He would welcome information on complaints submitted to the State party about cases of enforced disappearance in areas occupied by non-State actors. He would appreciate, for example, further information on the 2004 invasion of Fallujah and the hundreds of victims reported to be buried in mass graves there. The Committee had also received information that 170 persons had been abducted near Samarra between June and October 2014, some of whom were later found dead and others were still missing. In addition, it had been notified of some 2,000 alleged cases of enforced disappearance committed by members of the police, security forces and militias and had received requests for urgent action in connection with abductions carried out by members of those groups.

20. The Government's relationship with the militias was not clear. Were they a part of the Government? Did they receive funds from the Iraqi State or from other States? He wondered whether allegations of human rights violations committed by the militias, including cases of enforced disappearance, had been investigated. Were such armed groups sanctioned by law or were they operating illegally?

21. Inasmuch as the military lent support to the civilian authorities in their investigation of criminal offences committed on military premises, including with regard to protecting evidence and witnesses, he was concerned that such support might affect the impartiality and effectiveness of the investigations.

22. Turning to paragraph 17 of the replies to the list of issues, he said that it was not clear to him, in criminal case No. 298/C/2005, if it was a case of someone accused of committing an act of enforced disappearance being found innocent or if it was a civil

case against the State for not having released a prisoner; if the latter, was the continued detention of the prisoner being interpreted as a case of enforced disappearance? Further details were also requested on the Amnesty Act.

23. He asked if he had understood correctly that article 40 of the Criminal Code allowed a defence of superior orders to be used to justify unlawful acts by the military and security forces. If so, he wished to know how that meshed with the State party's obligation to investigate all persons responsible for an enforced disappearance and not just the superior officers involved.

24. With reference to the table in paragraph 17, he would like to know whether any of those 16,533 victims of terrorism had been subjected to enforced disappearance. Were the 110 victims of enforced disappearance mentioned in paragraph 18 counted among those cases or did they constitute separate cases?

25. Statistical data had not been provided on the investigations conducted into cases of enforced disappearance and on the sentences handed down. Information was also needed on the reparation provided to victims other than the 13 cases referred to in the table in paragraph 18. More information was needed as well on the pending cases in the enforced disappearance file mentioned in paragraph 122 of the report.

26. Turning to paragraph 19 of the written replies, he would welcome further details on the five enforced disappearance cases brought against senior officials of the former regime before the High Criminal Court, including the number of victims, the number and rank of the perpetrators and the sentences imposed. He also wished to have more information on the efforts made to investigate abductions by ISIL and other groups.

27. He asked if he had understood correctly from paragraph 20 of the replies that there were no specialized units in the police, prosecution service or other security forces to investigate enforced disappearances. If that was the case, he wished to know whether the State party's legislation allowed for setting up a special prosecutor's office to handle such offences. He was concerned that complaints received by the Iraqi High Commission for Human Rights had been transmitted not to the Office of the Public Prosecutor but to the Ministry of the Interior and the Ministry of Justice, which is where some of those allegedly responsible for enforced disappearances worked. He wished to have more detailed information on how the High Commission dealt with complaints of enforced disappearance.

28. Referring to the State's obligations in relation to the investigation of allegations of enforced disappearance, he asked the delegation to report on the status of the witness protection bill drafted by the Ministry of Human Rights, including the proposed structure, resources and mode of action, and what would become of this type of legislation now that the Ministry had apparently been dissolved. He wondered whether the witness protection structure could be used for implementing protection measures ordered by the Committee under its urgent action procedure. He wished to know whether there were any programmes or resources for providing psychological support to victims and witnesses during proceedings in cases involving serious human rights violations.

29. Turning to the reply to paragraph 16 of the list of issues, he asked whether a police officer who had been accused of committing an enforced disappearance but had not been detained was not subject to suspension and would be allowed to continue participating in the investigation into the crime in which he was involved. He also wished to know whether the judicial authorities could choose to carry out investigations with a different, more impartial security force than the one where the accused person worked.

30. **Ms. Janina** said that she was concerned that the Convention did not enjoy a higher status than national law. She asked which provisions would be applied by the Iraqi courts in the event of a conflict between the provisions of the Convention and domestic legislation. Had there been any cases in which the courts had referred to the provisions of the Convention? If not, did the State party consider that the absence of legislation criminalizing enforced disappearance had an influence in that regard? Referring to article 16, on non-refoulement, she asked how authorities handled persons who claimed that they would be at risk of enforced disappearance if returned. Was there any investigation into individual circumstances and was the general human rights situation in the country of origin taken into account? She wished to know whether the State party had plans to introduce specific legislation to prohibit refoulement in such cases. She also wished to know whether there were any policies or strategies in place that addressed the specific situation of women, either as victims of enforced disappearance or as relatives of victims.

31. **Mr. Yakushiji** said that the State party's reply to paragraph 12 of the list of issues did not cover acts committed by militias in 2014 that could amount to enforced disappearances. Noting that the Committee's sources referred to the alleged abduction of several persons by militias, he requested information on the measures taken by the State party to investigate those allegations. He would appreciate further information on the Government's efforts to deal with enforced disappearances committed by ISIL, including how it investigated and documented such acts and how it brought those responsible to justice. In that connection, he would welcome further information on the remedies available to the victims of enforced disappearances perpetrated by such groups. He wondered whether the right to reparations provided for in article 21 of the bill to combat enforced disappearance would apply to abductions perpetrated by State organs as well as by organized groups.

32. **Mr. Corcuera Cabezut** asked what status the Convention had in the domestic legal order. Drawing attention to the fact that, under the Convention, the obeying of an order could not be invoked to justify an enforced disappearance, he asked whether the provision in domestic law stipulating that superior orders could not be questioned would be repealed by virtue of the incorporation of the Convention into Iraqi law.

The meeting was suspended at 4.25 p.m. and resumed at 4.45 p.m.

33. **Mr. Huhle** said that the Committee had serious concerns in relation to secret detention. Although the State party asserted in its written replies to the list of issues that there were no secret detention facilities, many of the Committee's sources indicated that such facilities did in fact exist. In any case, even if there were no secret detention facilities as such, that did not mean that secret detention could not take place. The issue was not necessarily the place of detention itself but rather the refusal to provide information on the whereabouts of a detained person to relatives and others with a legitimate interest. The Committee wished to know about occurrences of disappearances involving secret detention and would welcome further information on legislative, administrative and other measures to prevent secret detention. It would also welcome details on the investigations carried out into the 36 cases of alleged enforced disappearance brought before the Committee under the article 30 urgent action procedure. In that context, he requested information on the training provided to security officers, not only the police and army officers but also members of the new security forces that had been established, to ensure that they were aware of their obligation to provide information whenever they detained an individual.

34. With reference to the State party's reply to question 19 of the list of issues, he sought clarification about the obligation to record in an electronic and manual registe and within 24 hours of an arrest the name of the arrested person, the location of the place of detention and the grounds and legal provision that had led to the arrest. Did it

apply only to the police and the military or also to other security forces? He was concerned that it appeared to apply to places of detention administered by the Ministry of Justice but not to those administered by the Ministry of Defence and any other entity. He was also concerned that the legal basis for that obligation appeared to be an administrative order from 2014, which could easily be retracted without the involvement of any legislative body. Noting that there was no central register of detained persons in Iraq, he stressed that it was of the utmost importance that such a register should be established, as it was one of the best means of preventing enforced disappearances. The Committee would be interested to know how registers of detainees were kept up to date, who oversaw the registers and how often they were checked to ensure that any failure to register a person could be discovered and sanctioned. The Committee wished to know what measures the Government had taken as follow-up to the urgent action requests in terms of sanctioning the responsible officers and preventing those offences from reoccurring. The Committee would be interested to know if the State party had plans to formulate an effective overall strategy to prevent secret detention and guarantee the right of all persons to the truth and information, as provided for in the Convention.

35. **Mr. Hazan** said that he would welcome further details on the content of the bill on reparations for victims, its passage through parliament and its status following the dissolution of the Ministry of Human Rights. He expressed concern that the article of the bill cited in the written replies did not cover all of the forms of reparation provided for in article 24, paragraph 5, of the Convention, such as satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. Referring to paragraph 35 of the written replies, he wondered whether there were any disaggregated statistics on the compensation provided to victims of enforced disappearance and any data prior to 2014. He asked whether the compensation provided was purely financial or whether it included psychological or medical assistance and what the compensation would be equivalent to in a major currency. Had compensation been provided for enforced disappearance since the entry into force of the Convention?

36. He requested more detail on the mechanisms to locate disappeared persons and who the families of disappeared persons should contact. He asked whether the amendment to the Mass Graves Act had been promulgated; if not, what was its legal status currently? With regard to the 3,502 bodies found in 202 mass graves as indicated in paragraph 36 of the replies, he asked how many of those bodies had been identified and returned to the families and what happened to the bodies that had not been identified. He asked whether there was a DNA database on family members of disappeared persons and other ante-mortem information to help identify remains from mass graves and how the identification of remains was carried out.

37. He wished to know whether the authorities continued to look for disappeared persons once a certificate of presumed death had been issued and whether death certificates were used to provide access to social welfare benefits or had an impact on family rights.

38. The delegation should indicate whether there were cases in the State party in which children had been disappeared, whether measures were taken to prevent the disappearance of children, whether it was possible to overturn custody decisions in cases involving orphaned children and what legal remedies were available to the extended families of children who had been orphaned. He asked whether the bill on enforced disappearance included provisions on the crime of substitution of identity. He requested clarification on the Juvenile Welfare Act's procedures concerning minors who had infringed the law and asked whether the provisions were also applicable to

children who had been orphaned, and if so, whether such cases were handled by a criminal or civil court judge.

39. **Mr. López Ortega** requested detailed information on the custody regime for detainees and how their right to communicate with family members during their detention was guaranteed, who was able to visit detainees as part of a family visit, whether detainees were entitled to legal assistance, whether foreign detainees enjoyed the same rights as citizens in detention and whether any restrictions could be placed on their rights.

40. He asked whether registers of detainees included all the identity information set out in article 17, paragraph 3, of the Convention and whether the State party fulfilled the requirements under article 18 of the Convention to provide relatives with the prescribed information about a person's detention. The delegation should explain how relatives and lawyers were informed that a detainee was due to be transferred to a different place of detention. The delegation should indicate whether, in accordance with article 20 of the Convention, any limits were placed on information about a person deprived of his or her liberty and which authority set those limitations. He asked which authority was responsible for monitoring and enforcing the right to information provided for in article 18 of the Convention and how officials or authorities were sanctioned for the failure to respect those provisions. He asked what policies the Government planned to implement to ensure the effective enforcement of the rights and guarantees contained in articles 17 and 18 of the Convention.

41. **Mr. Corcuera Cabezut** said that it was important to presume that disappeared persons were alive until their whereabouts had been determined in order to ensure that the authorities continued to investigate their cases. He asked whether the State party intended to adopt legislation that addressed the financial and family law issues which arose following a disappearance and that did not require the authorities to presume that the individual concerned had died.

42. **Mr. Figallo Rivadeneyra**, noting that the Defence of National Security Act No. 1 of 2004 was a pre-constitutional law, requested clarification of the rights that could be restricted under that law if a state of emergency was declared. The delegation should explain how the provisions of that law permitting the Prime Minister to order the detention or arrest of a person, or to delegate that power to military or civilian leaders, were consistent with article 9 of the Convention.

The meeting was suspended at 5.20 p.m. and resumed at 5.35 p.m.

43. **Mr. Zebari** (Kurdistan Regional Government, Iraq) said that, under the Baath regime, the Iraqi people, and the Kurdish people in particular, had suffered decades of human rights violations including ethnic cleansing, chemical bombardment, forced displacement and genocide. Policies pursued by the dictatorship from 1968 to 2003 had led to the disappearance of thousands of persons from all ethnicities and religions. The Kurdistan Regional Government reaffirmed its commitment to the Convention and was working to grant compensation and reparations to victims and the families of victims of enforced disappearance, which was a punishable offence.

44. The Anfal campaign had led to the disappearance of hundreds of thousands of persons, notably Kurdish Feylis. Enforced disappearances had continued after the fall of the Baath regime and up to the present day, as ISIL had detained thousands of Kurdish Yazidis and taken them to unknown locations. The scale of enforced disappearances had destroyed families, the economy and the social fabric of society, and the ongoing situation represented a significant challenge to Iraqi officials.

45. Despite the amendments made to the country's criminal law, certain provisions were unjust and did not provide adequate legal protection from enforced

disappearance. Accession to the Convention was a welcome step and the Kurdistan Regional Government was taking action to end the crime of enforced disappearance, particularly since the Kurdish people were a vulnerable group that suffered disproportionately from that crime. He called on the United Nations and all relevant organizations to document the crimes committed against the Kurdish people since the 1960s, in particular against the Feyli and Yazidi peoples.

46. The Kurdistan Regional Government had made progress in most of the areas raised by Committee members in terms of law and practice. Significant work to uncover mass graves had been under way since 2005 and detention facilities followed procedures for the registration of detainees, family visits and the provision of legal assistance. Officials from the United Nations Assistance Mission for Iraq had made 67 visits to one prison in Arbil, for example, and most international visitors were afforded similar access to prison facilities.

47. More than US$ 100,000 had been allocated to rescuing Yazidis who had been disappeared or held prisoner by ISIL. As at the end of August 2015, 2,200 prisoners or disappeared persons had been rescued from areas under ISIL control. The Kurdistan Regional Government was planning military action and rescue missions in ISIL-controlled areas. In areas that had already been liberated, action groups, international organizations and government ministries were working to provide services and compensation and to register displaced persons.

The meeting rose at 5.50 p.m.

United Nations CED/C/SR.141

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
11 September 2015

Original: English

Committee on Enforced Disappearances
Ninth session

Summary record (partial)* of the 141st meeting
Held at the Palais des Nations, Geneva, on Tuesday, 8 September 2015, at 10 a.m.

Chairperson: Mr. Decaux

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Iraq (continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-15436 (E) 110915 110915

Please recycle

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Iraq (continued) (CED/C/IRQ/1; CED/C/IRQ/Q/1 and Add.1)

1. At the invitation of the Chairperson, the delegation of Iraq took places at the Committee table.

2. **Mr. Ismail** (Iraq) said that the Popular Mobilization Forces had been established in response to a call from religious authorities in Iraq for people from all sectors of society to take up arms and counter the threat posed by the terrorist group ISIL, which had occupied areas in the north and west of the country and had even encroached upon Baghdad. The Popular Mobilization Forces had been in existence for a year and, fighting alongside the regular Iraqi army, had driven back ISIL and contained it within certain areas. With support from coalition forces and the international community, the fight to eradicate the group altogether continued. In view of the important role being performed by the Popular Mobilization Forces, steps were being taken to incorporate them into the framework of the Iraqi army itself.

3. The many crimes being committed by ISIL included enforced disappearance. At Camp Speicher, 1,700 unarmed soldiers had fallen into the hands of the terrorist group and nothing more had been heard of them since. Subsequently, when the city of Tikrit had been liberated from ISIL, a number of the persons who had been arrested had admitted that the soldiers had been killed and their bodies buried in mass graves or thrown into the river. The Government committee that had been set up to investigate cases of enforced disappearance was working to gather all the available information and identify those responsible. The committee had succeeded in discovering the sites of three mass graves and was working to identify the bodies of the victims and return their remains to their relatives.

4. **Mr. Ameen** (Iraq) said that, in Iraq, proposed legislation had to pass through a number of stages before becoming law. Bills put forward by a ministry were presented to the Council of Ministers before being submitted to the parliament, where they were examined by specialized committees prior to being debated in the Council of Representatives and going through a three-stage voting process. Only then could new legislation be signed by the President and published in the Official Gazette, at which stage it would pass into law. The exact wording of the bill to combat enforced disappearance was being carefully reviewed by government experts, and the bill had therefore not yet been promulgated. No piece of legislation could be abrogated or amended unless it had already passed into law.

5. Once ratified, an international treaty entered into force in Iraq by means of the enactment of a national law, which had to pass through the stages that he had just described. The courts applied Iraqi law and therefore took into account the provisions of international treaties which had legal force in the country. Having reviewed numerous judgements rendered by Iraqi courts, he had found no instances in which they had made direct reference to an international treaty, since judges preferred to base their decisions on national, customary and case law.

6. No one could be arrested by a member of either the armed forces or any law enforcement agency without a warrant from an investigating judge in which the name of the person concerned and the reasons for the arrest were clearly stated. Investigating judges were appointed only after completing four years of legal study, including one year devoted to the subject of human rights. Given the nature of operations against terrorist groups in Iraq, events often took place very quickly and, although arrest records were kept, they were compiled by a number of different authorities around the country, and there was no unified, readily accessible registry of

arrest records. In order to rectify that situation, the Council of Ministers had issued Administrative Order No. 57 in 2014. That Order provided for a centralized electronic registration system which could be consulted by all parties concerned and which would include the name of the person arrested, the offence with which he or she was charged, the date of arrest and the place of detention. Order No. 57 alone would not be sufficient to resolve the underlying problem, but its implementation would provide certain safeguards for arrested persons and would further the Government's efforts to ensure the fulfilment of the country's international obligations.

7. In the case of a conflict between two laws, the Iraqi judiciary followed the civil law principle whereby a later legal text superseded an earlier legal text. Once a law to implement the Convention had been enacted, there would be no distinction between it and other national legislation. The fact that its provisions concerned a fairly small number of the cases brought before the Iraqi courts did not mean that the Convention would be disregarded. In fact, the Ministry of Human Rights had been established, and human rights divisions set up in other ministries, in order to help Iraqis understand that their rights were protected not just by national legislation but also by an international system of human rights to which Iraq belonged.

8. As the Committee was fully aware, the terrorist groups currently operating in the Middle East often killed the men whom they captured and, consequently, the majority of victims of enforced disappearance were women and children. In Iraqi society, offences against women and children were considered to be particularly reprehensible and often gave rise to harsh responses, including honour crimes. Nonetheless, in cases of enforced disappearance, the law was applied equally and the same penalties imposed, regardless of whether the victim was a man or a woman, a soldier or civilian, a Muslim or a Christian.

9. Security and law enforcement officials in Iraq were not allowed to enter into service until they had received appropriate human rights training. Since, under the current circumstances, the Iraqi armed forces were obliged to operate, not on an isolated front line against the army of another State, but on the streets of Iraqi towns and cities, the occurrence of human rights violations was conceivably more likely, and the authorities had taken steps to ensure that training programmes focused on the protection of human rights, the reduction of collateral damage and the proper treatment of persons arrested in the course of security operations.

10. Under Iraqi law, a disappeared person could be declared legally dead four years after the authorities had received official notification of the disappearance. An official declaration of death allowed the person's relatives to exercise their prerogatives with respect to such matters as inheritance, pension rights and remarriage.

11. **Ms. Al-Juboori** (Iraq) said that the authorities were working to identify the persons responsible for enforced disappearances under the former regime and to bring them to justice. As of the end of 2014, more than 37,000 persons had received compensation through the Martyrs Foundation and more than 48,000 through the Political Prisoners Foundation. Compensation was sometimes monetary in nature — as, for example, when the disappeared person had been a breadwinner — and, in other cases, took the form of assisted access to education or to posts in government offices. Article 21 of the draft bill to combat enforced disappearance also provided for redress for victims of enforced disappearance. The Ministry of Human Rights had compiled information on about 16,400 cases of enforced disappearance, most of which had occurred under the former regime. A committee had been formed to conduct investigations on the basis of information provided to the Ministry of Foreign Affairs by the Working Group on Enforced or Involuntary Disappearances. Thus far, it had been possible to determine the fate of 2,735 persons.

12. As for the question regarding the conformity of the Iraqi Criminal Code with article 10 of the Convention, any Iraqi national who was suspected of having committed or having been an accessory to a crime of enforced disappearance that had occurred abroad was subject to Iraqi criminal law. Such persons could also be prosecuted abroad under the criminal law of the country in which they resided. A foreign national residing in Iraq who was suspected of committing a crime in Iraq was also subject to Iraqi criminal law. No favouritism was shown to members of the armed forces in the course of judicial investigations; the Military Code of Criminal Procedure outlined a detailed procedure for such investigations that provided for independent oversight.

13. As part of the reconciliation process, the Amnesty Act of 2008 provided for the release from prison, exoneration and reintegration into society of certain persons who had been arrested or who were awaiting trial. Act No. 78 of 2008 provided for the court appointment of a guardian for children whose father had died. Minors involved in crimes of enforced disappearance were placed under the authority of the juvenile police, were brought before a juvenile court and were subject to investigation by a juvenile court judge. If charged, minors could not be tried until they had undergone psychological testing. Minors were not held in the same cells as adult offenders.

14. Section 30 of the Prison Code provided that prisoners awaiting trial were entitled to contact their relatives and receive visits from them, obtain legal assistance and meet with their lawyer without police intervention. They could read books, watch television, request a private cell, receive medical attention and were presumed innocent until proved guilty. Prisoners could also lodge a complaint directly with the prison inspectorate without having to go through the central prison authority. Complaints were investigated, and an effort was made to respond to them without delay.

15. **Mr. Al-Alusi** (Iraq) said that consideration was being given to the possibility of recognizing the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications pursuant to articles 31 and 32 of the Convention. The culture of human rights in Iraq was not yet sufficiently mature, however, for the population to have a full understanding of the domestic procedures to be followed when filing complaints, and Iraqi legislation did not yet clearly specify the criteria for exercising jurisdiction over human rights violations. However, an office had been set up in the General Secretariat of the Council of Ministers to receive complaints and to refer them to the proper authorities. Requests from the Committee on Enforced Disappearances for information from Iraq concerning communications were sent to the Ministry of Foreign Affairs, which transmitted them to the relevant authority: the General Secretariat of the Council of Ministers, the Supreme Judicial Council, the Ministry of the Interior or the Ministry of Defence.

16. The Ministry of Human Rights had been dissolved by decision of the Council of Ministers on 16 August 2015, along with several other ministries, as part of an urgent governmental reform which had been approved by the parliament. The General Secretariat of the Council of Ministers had subsequently set up human rights divisions in all ministries and governorates. Those divisions were responsible for ensuring the fulfilment of the country's international human rights obligations, tracking human rights violations and promoting a culture of human rights.

17. The Iraqi High Commission for Human Rights had been established under Act No. 53 of 2008 pursuant to article 102 of the Iraqi Constitution of 2005 and in accordance with the Paris Principles. Its mandate included ensuring respect for the human rights protected by the Constitution and the international human rights conventions to which Iraq was a party, coordinating measures for promoting human rights on the part of governmental institutions and working with civil society

organizations active in the field of human rights in Iraq. The Commission was empowered to receive complaints from individuals, groups and NGOs, verify the validity of complaints, carry out preliminary investigations, and refer cases to the Public Prosecution Service for appropriate legal action. No complaints had been submitted by the Iraqi High Commission for Human Rights directly to the Ministry of Justice or the Ministry of the Interior, but the Commission had forwarded confidential correspondence concerning missing persons to the Public Prosecution Service. The Commission had received 14 complaints in 2014 and 29 complaints in 2015.

18. **Mr. Alatiyyah** (Iraq) said that, even though crimes of enforced disappearance that had been committed in areas where ISIL held sway were outside the State's control, the Central Criminal Court of Iraq was receiving and compiling thousands of reports, complaints and communications concerning such crimes, and some offenders had been convicted. Thus, the Iraqi judiciary was already exercising its jurisdiction to investigate those crimes in accordance with article 3 of the Convention, as well as in accordance with Human Rights Council resolution S-22/1, which called upon the Government of Iraq to ensure that all perpetrators were brought to justice.

19. Some 3,500 corpses found in mass graves in various parts of Iraq had been identified. When mass graves were opened, the remains were exhumed and documented, appropriate scientific techniques were used to preserve samples, and the records were transmitted to the Central Criminal Court. Using a biological database containing information provided by relatives of deceased persons and DNA profiling, forensic specialists worked to identify the victims. When the remains of a deceased person were identified, the family was provided with a death certificate, informed of the burial site and offered the possibility of having the corpse exhumed for reburial elsewhere. Not enough forensic doctors to perform that kind of work were available in Iraq. The Ministry of Health was attempting to secure the services of more forensic doctors within available resources. The Government had requested technical assistance with DNA testing of the victims of the Speicher Camp massacre, as well as other cases specified in a Ministry of Foreign Affairs memorandum to the United Nations Assistance Mission for Iraq in Baghdad.

20. Regarding the Committee's question concerning the steps taken to ensure that persons who violated the Foreigners Residency Act of 1978 were not subjected to enforced disappearance when being deported, it should be noted that the bill on enforced disappearance reproduced the text of article 16 of the Convention, which addressed that issue. Article 10 of the bill prescribed a penalty of 10 years' imprisonment for perpetrators of enforced disappearance. The penalty increased to life imprisonment if the victim of the offence was a child or a woman.

21. **Mr. Zebari** (Iraq) said that the Kurdistan Regional Government had made every effort to support the peaceful coexistence of all ethnic and religious groups in the region but was facing a number of obstacles, including an economic crisis and the increasing security threat posed by ISIL. Its military units, security forces and institutions were under the authority of the Ministry of Peshmerga Affairs. The duty of the Peshmerga forces was to defend the Kurdistan Region and to provide support to the federal Iraqi forces in countering acts of aggression and terrorism. An International Crisis Group report had questioned the structure and legality of the Peshmerga forces, claiming that they were a decentralized militia instead of a legitimate security force. The Ministry of Peshmerga Affairs Act of 2007 set out the duties and structure of the Ministry, however, and a 2007 presidential decree had authorized the establishment of a command department to oversee and administer the affairs of all the country's security forces. Although the Peshmerga forces were at the forefront of the war against ISIL, they had far fewer weapons than needed, had suffered thousands of casualties since early 2014 and were struggling to contain ISIL.

22. Allegations that the Yazidis had an armed militia were untrue; they had in fact an official force which was attached to the Ministry of Peshmerga Affairs. The Government stood ready to investigate any reports of abuses, and any individual found to be guilty of misconduct would be punished in accordance with the law. Peshmerga forces had not razed any Sunni Arab villages. After the liberation of certain areas from ISIL control, evidence had shown that the majority of the homes that had been demolished had in fact belonged to Kurds, whereas Arab-owned houses had been left largely unscathed. Most of the houses destroyed in the town of Sinjar, which was still under ISIL control, had been inhabited by Kurds as well. Acts of vandalism had been committed after the liberation of some areas, but not in a systematic or organized way.

23. Internally displaced persons in the Kurdistan Region had access to health-care facilities in the camps that had been set up to house them and to public hospitals. Some hospitals had expanded their obstetric departments to meet the needs of displaced and refugee women. The Kurdistan Regional Government was working to ensure that reproductive and other health-care services for displaced persons met international standards.

24. Since June 2014, 322 people suspected of terrorism had been detained and processed by the Anti-Terrorism Department before being transferred to detention facilities at Arbil: 83 had since been released and 239 remained in those facilities. Under the Anti-Terrorism Act, ISIL detainees were permitted to see lawyers and family members and were guaranteed a fair trial. Representatives of the International Committee of the Red Cross had visited many of the detention centres and made contact with all the prisoners, while Human Rights Watch had been invited to do the same.

25. Many members of the Yazidi community had been relocated in August 2014 to the provinces of Arbil, Kalar, Dahuk and Sulaymaniyah, but a large number of women and children had subsequently been kidnapped by ISIL and forced into slavery. Current data suggested that 5,670 Yazidis had been kidnapped, of which 1,035 had escaped or been rescued. The Kurdistan Regional Government set aside a substantial portion of its budget for paying ransoms in order to secure the release of Yazidis. After people had been rescued, cash assistance was urgently needed. United Nations monitoring groups had approved some 29,400 cases for cash assistance as at February 2015. Such assistance was distributed on a needs basis. In March 2015, the parliament of the Kurdistan Region had earmarked US$ 141,685 for the reintegration of vulnerable Yazidi returnees. On 29 August 2014, the Ministry of Natural Resources had expanded the Kurdistan Oil and Gas Humanitarian Initiative to include internally displaced persons, and US$ 15 million in donations from oil companies had been received for that purpose.

26. Once the immediate needs of rescued Yazidis had been met, they required legal assistance. The highly beneficial Immediate Response Plan for the Kurdistan Region was helping to meet the needs of internally displaced persons, including Yazidi returnees and escapees, by hiring health professionals and equipping public health facilities. Health education sessions were being provided to thousands of internally displaced persons in order to teach them about the importance of hygiene and reproductive health services in their new environments.

27. The United Nations Assistance Mission for Iraq had visited numerous detention centres in the Kurdistan Region and interviewed detainees, and the Kurdistan Regional Government welcomed representatives of international organizations that wished to monitor conditions of detention there. Once in custody, a detainee could be held for up to 15 days while the investigation was finalized and a hearing held. If further evidence was required before a case went to trial, the investigation period could be extended by court order. The Ministry of the Interior regularly provided the authorities with lists of

any detainees who had been held for more than 6 months pending trial. The Kurdistan Regional Government had no secret prisons and treated all detainees as provided for by law. The Kurdish parliament had passed a law that specifically prohibited the ill-treatment of detainees, including those arrested on charges of terrorism.

28. Pursuant to the Iraqi Constitution, any confession made under duress could not be used in a court of law. Torture was prohibited in the Kurdistan Region, and all allegations of torture or abuse in its prisons were investigated. Any staff member of the Ministry of the Interior or of the Region's security forces who failed to report complaints of mistreatment or torture would face legal action. Investigative committees had recently been set up by the Ministry of the Interior to follow up on prisoners' complaints of mistreatment.

29. In early 2015, 520 prison staff and officials and 1,500 members of the public, including lawyers, judges, NGO representatives, council members and journalists, had received training on inmate rights from the Justice Network for Prisoners. Investigating judges routinely sent a representative to participate in investigations being conducted by security forces. The detention facilities run by the security forces were primarily used for persons suspected of terror-related offences and serious felonies. They were designed to hold suspects in pretrial detention, pending the completion of criminal investigations and court proceedings. Security agents then transferred convicted prisoners to a prison supervised by the Ministry of the Interior to serve their term.

30. **Mr. Qarawlus** (Iraq) said that the coalition forces that had arrived in Iraq after the fall of the Baath regime in 2003 had assisted with the collection of DNA samples. In 2004, the United States had provided DNA processing equipment and had helped Iraq to establish a forensics department. Experts from the United Kingdom and Australia had then trained Iraqi personnel to use that equipment. The Forensics Department was currently processing 480 cases and 67 investigations. DNA-based research was, however, extremely costly, and budget cuts had seriously reduced the Department's ability to conduct such investigations. Some 120 million Iraqi dinars had been earmarked for DNA-based investigations, and the Department in Baghdad was working closely with its counterpart in the Kurdistan Region to conduct the necessary research.

31. **Mr. Ameen** (Iraq), adding to his colleague's reply to Ms. Janina's question regarding penalties for the enforced disappearance of women and children, said that, although there were currently no specific provisions concerning penalties for perpetrators of enforced disappearance, such acts were treated as an aggravating circumstance.

32. **Mr. Hazan** said that the Committee had received reports of the enforced disappearance of some 200,000 persons since 2003. The State party's report and the delegation's replies had provided the Committee with useful insights into the Iraqi legal system, but the principles governing the judiciary and the legal system did not tally with the actual practices reported by various sources. He appreciated the fact that the State party understood the need to pass a specific law on crimes of enforced disappearance, in accordance with article 4 of the Convention, but the point should be made that such a law could also be used as a foundation for efforts to ensure compliance with all the provisions of the Convention.

33. The issue of secret detention was of particular concern, as it appeared to be widespread. Closer scrutiny was called for in order to ensure that further cases of enforced disappearance did not occur. It also appeared that, of the thousands of allegations of enforced disappearance that had been lodged, only five cases had actually come to trial and, in many of the cases that were under investigation,

defendants' claims that they were following the orders of a superior threatened to derail the legal proceedings. The Iraqi Government's efforts to set up a witness protection system and to establish complaint and redress procedures were commendable, but further efforts would be needed in order to comply with article 24 of the Convention. He hoped that the current dialogue would result in the further development of specific legal norms dealing with enforced disappearance that would, for example, do away with the requirement that a certificate of presumption of death had to be issued before family members could exercise their property and inheritance rights.

34. **Mr. Huhle** said that he shared Mr. Hazan's concerns and asked which bodies had assumed the responsibilities of the former Ministry of Human Rights in respect of cases of enforced disappearance.

35. **Mr. Ismail** (Iraq) said that he wished to reiterate his country's full commitment to protecting and strengthening human rights in Iraq with the help of international mechanisms and to working with the Committee. His delegation was grateful to the Committee and would await the Committee's recommendations with great interest. The Iraqi delegation would provide replies to any outstanding questions within 48 hours.

36. **The Chairperson** said that Iraq was one of the first countries to ratify the Convention but that its ratification was just a starting point for the work required to meet the real challenges involved in implementing the Convention and monitoring compliance. He welcomed the delegation's pledge to provide written responses within 48 hours and looked forward to continuing the Committee's constructive dialogue with the State party and to receiving replies to any further questions which the Committee might wish to ask.

The discussion covered in the summary record ended at 12.10 p.m.

United Nations CED/C/SR.142

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
17 September 2015

Original: English

Committee on Enforced Disappearances
Ninth session

Summary record of the 142nd meeting
Held at the Palais des Nations, Geneva, on Tuesday, 8 September 2015, at 3 p.m.

Chairperson: Mr. Decaux

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Montenegro

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-15437 110915 170915

Please recycle

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Montenegro (CED/C/MNE/1; CED/C/MNE/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Mr. Pažin** (Montenegro) said that he welcomed the opportunity to inform the Committee about the legislative and institutional arrangements and mechanisms for providing protection against enforced disappearance that had been put in place in Montenegro since the country's ratification of the Convention in 2011. Under the Constitution, ratification entailed the incorporation of the provisions of the Convention into domestic law in such a manner as to be directly applicable. Where there was a conflict between the Convention and national law, the Convention prevailed. Montenegro had also accepted the individual complaints procedure under article 31, paragraph 1, of the Convention and had recognized the competence of the Committee to receive and consider communications in which a State party claimed that another State party was not fulfilling its obligations under the Convention.

3. Since the country's independence in 2006, the Government had made considerable progress towards reforming the national system for the protection of human rights and fundamental freedoms. Against the backdrop of European and Euro-Atlantic integration, it was harmonizing its domestic law with European law and building regional and international networks to tackle human rights violations, transnational organized crime and the like.

4. In 2012, Montenegro had embarked on talks with the European Union with a view to becoming a full member of that bloc. Negotiations focused on the following conditions for membership: first, further development of the judiciary and fundamental rights and, secondly, justice, freedom and security. The Government was strongly committed to safeguarding the values of the United Nations and fostering bilateral and multilateral relations. It actively cooperated with the Council of Europe and the Organization for Security and Cooperation in Europe in protecting human rights, minority rights and fundamental freedoms and promoting the rule of law and further democratization of society. It was a party to all the major European human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on Compensation of Victims of Violent Crimes, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes and others.

5. Human rights and freedoms, including protection against enforced disappearance, were guaranteed under the Constitution, numerous international treaties and the national legislation in force. The guarantees of rights and freedoms provided for under the Constitution were described in detail in the State party's initial report.

6. His Government placed particular emphasis on promoting the rule of law. It was carrying out far-reaching judicial reforms under the Judicial Reform Strategy for the period 2014-2018 and an action plan for the judiciary and fundamental rights in accordance with European Union law. It was in the process of harmonizing key criminal justice legislation with European Union law and introducing institutional changes accordingly, including capacity-building of State prosecutors' offices, the courts, police and other law enforcement authorities. Under the action plan, the two departments of the higher courts responsible for combating organized crime, corruption, terrorism and war crimes would be merged into one special department of the High Court in Podgorica in order to investigate, prosecute and adjudicate on such

cases more effectively. The parliament had passed a law in February 2015 providing for the establishment of the Special State Prosecutor's Office as an independent prosecution authority to combat those types of crime. The Office had the necessary resources and mechanisms at its disposal to investigate all cases of alleged enforced disappearance and was not subject to any restrictions on access to places of detention where disappeared persons might be believed to be held.

7. The Commission on Missing Persons had been set up to look into cases of persons who had gone missing following the armed conflicts in the former Yugoslavia. The Commission was responsible for monitoring the status of cases, putting forward proposals, coordinating the search efforts of competent authorities and organizations, and cooperating with the families and associations of missing persons. It worked with the relevant ministries, professionals and forensic experts and cooperated with international organizations such as the International Commission for Missing Persons and the International Committee of the Red Cross. It also collaborated with its counterparts in the region to help in the identification of victims and the transfer of mortal remains. It kept the families of missing persons informed about the current status of cases, it collected new information about alleged victims' fates and it provided families with financial support. The Commission notified families when the remains of missing persons were found and bore the costs of transportation and burial.

8. The Commission had signed a cooperation agreement in April 2012 with the Commission on Missing Persons of Serbia as part of the effort to mitigate the severe humanitarian consequences of the conflicts in the former Yugoslavia, not least of all by upholding the right of families to know the full truth about their missing relatives. Legal steps were currently being taken to conclude a similar agreement with the Commission on Missing Persons of Kosovo.

9. At a meeting of governmental institutions responsible for handling cases of missing persons in the western Balkans, held in May 2015, the matter of drawing up a joint list of missing persons in the territory of the former Yugoslavia had been discussed and the Government of Montenegro had endorsed such a list. Working in cooperation with its counterparts and associations in neighbouring countries, the Commission had handed over the remains of 14 persons who had been citizens or had been related to citizens of Montenegro at the time of their disappearance. Since July 2014, the remains of three people who had been on neighbouring countries' lists of missing persons and whose families lived in Montenegro had been handed over. Of the persons who had disappeared during the armed conflicts in the former Yugoslavia and were being searched for by the Commission, 61 were Montenegrin citizens or were related to persons who were permanent residents of Montenegro at the time of their reported disappearance: 43 were being searched for in Kosovo, 12 in Bosnia and Herzegovina and 6 in Croatia.

10. The crime of enforced disappearance was punishable under a number of provisions of the Criminal Code, including the article on unlawful deprivation of liberty (art. 162), abduction by force (art. 164), crimes against humanity (art. 427) and war crimes against the civilian population (art. 428). All cases of war crimes that had been brought before the Montenegrin courts had been prosecuted in an independent, impartial and efficient manner. In those cases, the courts had taken the jurisprudence of the International Tribunal for the Former Yugoslavia into account, and the authorities had applied the Geneva Conventions of 1949 and other relevant international agreements during indictment and sentencing proceedings. All victims of war crimes and their families in Montenegro were guaranteed access to justice and adequate compensation and reparation.

11. **Mr. Corcuera Cabezut** said that he was pleased to see such a high-level delegation in attendance. The presence of the Minister of Justice, a justice of the

Supreme Court and other high-ranking officials attested to the importance that the Government attached to the Convention. He also commended the State party on its acceptance of the individual complaint procedure under article 31 of the Convention, which demonstrated its openness to international monitoring. At the same time, he had a number of concerns, some of which had been touched on in the introductory statement. While welcoming the fact that the State party had drafted its initial report in consultation with civil society actors, in particular those working with the judiciary, he wondered why it had not involved others, such as non-governmental human rights organizations or civil society organizations involved in helping the families of victims of enforced disappearance. Why had the Protector of Human Rights and Freedoms (Ombudsman) not been consulted? Referring to paragraphs 3 to 7 of the replies to the list of issues, he asked whether it was indeed true that there was no possibility that the four cases in question had involved enforced disappearance.

12. **Mr. López Ortega**, referring to the reply to paragraph 3 of the list of issues, requested clarification on the number of cases of war crimes and crimes against humanity that had been tried. He would be interested to know why three of the cases mentioned had ended in acquittal. He would welcome further information on why the sentence in the case that had resulted in a conviction had been so light and not commensurate with the gravity of the crime. In the cases that had come before the courts, he wondered whether the chain of command had been followed in order to identify the most senior responsible officials or whether it was lower-ranking officials who had been prosecuted. He invited the delegation to comment on reports that the proceedings had been excessively long and that the standards applied by the domestic courts did not correspond to those applied by the International Tribunal for the Former Yugoslavia.

13. He requested details on the judicial reform that was under way as well as information on the staffing, functions and resources of the Department for the Suppression of Organized Crime, Corruption, Terrorism and War Crimes. Noting that the Department had jurisdiction to investigate and prosecute criminal offences under articles 427 and 428 of the Criminal Code, which covered only the most serious forms of enforced disappearance, he wondered which body would have jurisdiction over the other forms of enforced disappearance that were provided for in article 2 of the Convention and that did not come under those articles as they did not constitute crimes against humanity or war crimes. He wondered whether the State party had received any extradition requests dealing with the crime of enforced disappearance since the entry into force of the Convention or any requests for legal assistance or cooperation from neighbouring States in connection, for example, with the search for disappeared persons or the provision of evidence in cases of enforced disappearance.

14. **Mr. Corcuera Cabezut**, recalling the State party's obligation under article 4 of the Convention, said that he would be interested to hear an explanation of why the State party did not consider it necessary to include in its criminal legislation a provision that defined the crime of enforced disappearance as a specific offence as such. He also wished to know how the authorities of the State party interpreted article 7, paragraph 1, of the Convention, which stipulated that enforced disappearance should be punishable by appropriate penalties which took into account its extreme seriousness.

15. Referring to the provision mentioned in paragraph 18 of the written replies to the effect that persons serving in the army were obliged to execute superior orders except where that would amount to a criminal offence, he wondered whether there were similar provisions applicable to the police and other law enforcement officials.

16. He requested clarification as to whether the concept of an "extended criminal offence" referred to multiple acts rather than to an offence that was continuous in nature. If so, he wondered when the statute of limitations began to run.

17. Referring to paragraph 22 of the written replies, he asked whether there was any other legislation under which victims of enforced disappearance could claim comprehensive reparations rather than simply financial compensation.

18. Noting that Montenegro was a signatory to the Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, he requested additional information on the scope of the Law on International Assistance in Criminal Matters and asked which provisions would be applicable if a crime for which assistance was required had been committed in a country that was not a party to that Protocol.

19. Referring to the requirement under article 12, paragraph 4, of the Convention that a person suspected of having committed an enforced disappearance should not participate in the investigation into the offence, he requested clarification as to whether the Labour Law, which applied on a subsidiary basis to civil servants, was the only domestic legislation that provided for the suspension from duties of State officials suspected of involvement in an enforced disappearance. He would welcome additional details on the strategy for the investigation of war crimes and protection measures for witnesses. Lastly, he requested further information on the rights that could be suspended during a state of emergency.

20. **Ms. Janina** said that, although the State party was clearly committed to the rule of law and the protection of human rights, it was also necessary to have a domestic legal framework in place to prevent enforced disappearances. She invited the delegation to comment further on the State party's assertion that it did not require legislation that classified enforced disappearance as a specific crime. Stressing the importance of prosecuting cases of enforced disappearance, she requested information on the powers of the newly established Special State Prosecutor's Office and how it was expected to support efforts to combat impunity. She would welcome details on the State party's efforts to make cooperation with neighbouring countries more effective, particularly since the establishment of the Government's Commission on Missing Persons, and on its role in reconciliation initiatives in the region.

21. **Mr. Yakushiji** asked whether the provisions of the Convention relating to such matters as criminal procedure, criminal jurisdiction and extradition could be applied directly in the national courts when they differed from the provisions in national legislation on those matters and, if so, whether there had been any cases in which they had been directly invoked by prosecutors or alleged victims and applied by the courts. He also asked whether articles 162, 164, 427 and 428 of the Criminal Code covered all cases of enforced disappearance defined in article 2 of the Convention. In the absence of an autonomous crime of enforced disappearance in domestic law, he wondered how the State party took into account the three constituent elements of the crime of enforced disappearance defined in article 2 when applying those four articles of the Criminal Code. Noting that imprisonment or abduction without giving information thereon in order to deny legal protection amounted to a crime against humanity and that enforced disappearance was thus covered by the body of criminal offences against humanity, he asked whether the definition of crimes against humanity in the Criminal Code was broader than that in article 5 of the Convention and whether it covered most cases of enforced disappearance. He also asked whether an "extended criminal offence" under article 49 of the Criminal Code needed to be committed by the same offender or if an act of enforced disappearance committed by different offenders also constituted such an offence.

22. **Ms. Galvis Patiño** asked whether there had been any cases in which international treaties to which Montenegro was a party, and specifically the Convention, had been applied directly by the courts because those treaties' provisions dealt with a matter differently than national laws did and, if so, which provisions had been invoked.

23. **Mr. Hazan** said that he would welcome further details on the new Special State Prosecutor's Office, such as the size and composition of its staff. For example, did it include non-legal professionals such as forensic anthropologists? He also wished to know whether the State party had any specific mechanisms for the protection of witnesses or relatives of disappeared persons and whether psychological support was provided to witnesses and other participants in criminal proceedings.

24. **Mr. Huhle** said that criminal offences such as unlawful deprivation of liberty and abduction generally covered only the core elements of the crime but not the many deeds that were necessary for, or at least conducive to, the commission of the crime of enforced disappearance, such as denial of the truth. The Committee was of the view that the Criminal Code should contain a comprehensive definition of enforced disappearance that covered all acts that could be part of that crime.

The meeting was suspended at 4.10 p.m. and resumed at 4.35 p.m.

25. **Mr. Kojović** (Montenegro) said that Montenegro considered the crime of enforced disappearance, as defined in accordance with article 2, paragraph 4, of the Convention, to be covered by the definitions of other offences in the Criminal Code, primarily the unlawful deprivation of liberty, abduction, war crimes against civilians and war crimes against humanity. The Convention had not been invoked in any of the war crime cases heard by the courts, since the acts concerned had been committed prior to ratification of the Convention by Montenegro, but reference had been made to other international instruments.

26. The legislation of Montenegro included a definition of what was characterized as an extended criminal offence, which consisted of several similar offences that belonged to the same temporal continuum, had been committed by the same person and met two of the conditions set out in the corresponding law, such as involving the same injured party and being motivated by the same intent on the part of the perpetrator. The statute of limitations began to run from the moment that the last act forming part of the extended crime had been committed.

27. Montenegro had been the first of the former Yugoslav republics to launch prosecutions for war crimes and the first enforceable judgement in such a case had been issued in 1993. Although there had been six cases of war crimes prosecuted in total, only four had been addressed in the replies to the list of issues. In the Morinj case, the sentences handed down to the defendants had been determined by taking into consideration both mitigating and aggravating circumstances. All prisoners in the case had been identified and their families had been able to contact them. Humanitarian organizations and NGOs had also been permitted contact with the prisoners of war concerned. The Bukovica case had involved arson and was a case of a crime against humanity. The Montenegrin Government had made efforts to restore the houses involved to their previous condition and had launched a public campaign to help all persons who had fled their homes during the war to return to them. The Kaludjerski Laz case involved a crime against the civilian population in which there had been conflict between paramilitary groups and refugees from Kosovo, and all defendants had been acquitted due to a lack of evidence. In the deportation cases, the defendants had been acquitted due to a lack of evidence. Proceedings to determine whether those acquittals had been lawful were pending.

28. The Supreme Court had established a team to provide assistance to witnesses of war crimes, most of whom were from other States, and all witnesses to the war crimes tried in Montenegrin courts had been provided with protection, transport, accommodation, psychological support and medical care and had been informed of their rights during court proceedings. All witnesses had been returned safely to their countries of origin.

29. Within the courts, protection for witnesses included accommodations such as the use of video links for the presentation of evidence. Outside the courts, a special commission had been formed to arrange for the protection of witnesses. It comprised a Supreme Court judge, a representative of the Chief State Prosecutor's Office and a representative of the police. Witness protection measures were the same as those used in other European countries, and procedures for the provision of legal aid had been harmonized across Europe.

30. His country had not been involved in any of the armed conflicts that had taken place in the 1990s, which explained why so few cases involving war crimes had been tried. No person could participate in the investigation of a case in which he or she had a conflict of interest.

31. The trials of all six cases of war crimes had been concluded and binding judgements had been issued. Apparent leniency on the part of the courts was due to the fact that all cases had to be judged solely on the basis of the evidence submitted. Financial compensation could be provided to victims of war crimes only if they had filed the appropriate claims.

32. **Ms. Vukčević** (Montenegro) said that the Special State Prosecutor's Office had taken over many of the responsibilities of the Department for the Suppression of Organized Crime, Corruption, Terrorism and War Crimes in July 2015. The Special State Prosecutor's Office had recruited 8 of the 10 special prosecutors that were to serve on its staff, including its chief special prosecutor, and would include experts in different fields such as finance and information technology. A special investigative team of police officers who would report to the chief special prosecutor was to be set up. The Office would examine reports of war crimes as one way of combating impunity and would work to identify instances in which Montenegrins had possibly been involved in groups that had participated in war crimes. Any suspected war crimes would be prosecuted by special teams, with each team comprising one prosecutor and several police officers. Enforced disappearances, including unlawful deprivation of liberty, that did not constitute war crimes would not be investigated by the Special State Prosecutor's Office, but rather by a different prosecutor's office.

33. The Chief State Prosecutor's Office had begun to engage in international cooperation on war crimes in 2005, when it had signed cooperation protocols and agreements with Bosnia and Herzegovina, Croatia, Kosovo and Serbia. International legal assistance had been provided in many cases and had included the collection of data and evidence for submission to prosecution services in neighbouring countries, the joint identification of potential witnesses and suspects, and arrangements for witnesses to present evidence in Montenegro. In 2010, at the request of the European Union Rule of Law Mission in Kosovo, the courts had investigated reports that a mass grave existed in northern Montenegro, but they had been proven to be unfounded.

34. **Ms. Mašanović** (Montenegro) said that there was a broad framework in place in Montenegro for providing international legal assistance in criminal matters. Such assistance was granted on the basis of the Constitution, bilateral and multilateral agreements and the Law on International Legal Assistance in Criminal Matters. The latter had been adopted in 2008 and provided for reciprocity with respect to the issuance of letters rogatory.

35. In its initial report, the Government's aim had been to inform the Committee about the legislative and institutional framework for the implementation of the Convention in Montenegro and about the work being done by civil society organizations to promote human rights. Representatives of those organizations were involved in many government initiatives, including working groups established to draft laws or key government strategies. Her Government would take the Committee's recommendations fully into account and would ensure that the Protector of Human Rights and Freedoms was involved in its efforts to address the issue of enforced disappearance.

36. **Mr. Djukanović** (Montenegro) said that the Montenegrin Commission on Enforced Disappearances cooperated closely with the International Commission on Missing Persons, the International Committee of the Red Cross and the corresponding commissions in other countries of the region. His Government had already signed a protocol with Serbia and expected to sign one with Kosovo by October 2015. In May 2015, Montenegro had hosted a regional meeting at which the idea of drafting a list of all missing persons in the region had been discussed. Agreements on future cooperation with individual countries had also been reached at that meeting.

37. As stated in a joint declaration signed by the Heads of State of four countries in the region, including the President of Montenegro, efforts would continue to be made to work together to find all persons listed as disappeared. His Government had provided financial and other forms of assistance to families living in Montenegro whose relatives were listed as disappeared in Croatia or Bosnia and Herzegovina, and it stood ready to provide assistance to any State in need.

38. **Mr. López Ortega** said that he wished to thank the delegation for its enlightening responses to the Committee's questions. With regard to the war crimes case in which the accused had not been convicted due to a lack of evidence, it was clear that court cases involving crimes committed long ago or witnesses who lived abroad often resulted in such outcomes. He wished to know from what point in time the statute of limitations began to run in cases where persons deprived of their liberty had never been heard from again.

39. While Montenegro was not the only State party to maintain that enforced disappearance did not need to be classified as a specific offence, that position ran counter to the Committee's interpretation of article 4 of the Convention. It was the Committee's view that article 4 required States parties to adopt a national law setting out a specific definition of enforced disappearance that was in line with article 2 of the Convention. In States where no such definition had been incorporated into national law, the public prosecution service could prosecute a case as an instance of enforced disappearance only if it were part of a widespread or systematic practice, but it was unlikely that modern, democratic countries would experience such situations in the near future. Rather, those countries were more likely to have to deal with isolated cases of enforced disappearance, which nonetheless should be recognized as such. In countries that had not classified enforced disappearance as a specific offence, such disappearances were dealt with as cases of abduction or illegal deprivation of liberty, which failed to take into account the full scope and impact of the offence of enforced disappearance. The instances of extraordinary rendition in Europe following the terrorist attack of 11 September 2001 were one example of cases in which enforced disappearance had been carried out and should have been recognized as such.

40. **Mr. Corcuera Cabezut** said that his understanding of a continuing offence was one that was committed multiple times by the same individual with the same intent. An extended, continuous or permanent offence, on the other hand, was a single offence that continued over a period of time. Enforced disappearance fell into the latter category, which meant that the statute of limitations began to run only when the

person's fate or whereabouts became known. He asked whether Montenegrin law included such a concept. He would also like to know if he had understood correctly that, in one of the cases of enforced disappearance brought before the courts, the court had handed down a lighter sentence as a result of the presence of mitigating circumstances.

41. **Mr. Figallo Rivadeneyra** said that, while it was important to raise awareness of the Convention, the State party should also seek out all possible means of combating impunity. It would be well to conduct a thorough analysis of its Criminal Code, particularly articles 23, 26, 162 and 164, to ensure that it was fully in line with the Convention in terms of such concepts as complicity, instigation and the possible co-involvement of State and non-State actors.

42. **Mr. Kojović** (Montenegro) said that, while article 127 of the Criminal Code stated that, for general criminal offences, the statute of limitations should begin to run from the moment the offence was perpetrated, article 129 of the Code further provided that the prosecution of war crimes and crimes against humanity was not subject to any statute of limitations.

43. Although an individual might commit war crimes day after day on a continuing basis, if each day the person committed a different crime, such as deprivation of liberty one day followed by abduction the next day, then each offence should be dealt with separately, meaning that the situation would not constitute a continuous offence. In accordance with national law, the courts took into account both aggravating and mitigating circumstances. While he did not have information on hand about the details of the case in question, if there had been any mitigating circumstances then they would have been taken into account. Lastly, the Minister of Justice had listened with interest to the Committee's arguments for classifying enforced disappearance as a separate criminal offence and had the power to propose that the Government should heed that recommendation and amend its law. The issue remained open, and the Committee would be informed of any future developments in that regard.

The meeting rose at 5.40 p.m.

The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Montenegro (continued) (CED/C/MNE/1; CED/C/MNE/Q/1 and Add.1; HRI/CORE/MNE/2012)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Mr. Corcuera Cabezut** said that he would like to know whether there were any cases in which Montenegrin courts had applied the principle of non-refoulement and, if so, whether the persons in question had been at risk of enforced disappearance or of another type of situation covered by international refugee law. He wished to know which authority was responsible for determining the existence of such risks and what procedures were provided for under Montenegrin law in cases of expulsion or deportation.

3. He would appreciate clarification as to whether the definition of the term "victim" contained in the Criminal Code included the disappeared person's family members, relatives and loved ones and, if so, up to what degree of kinship. He had the impression that a person was characterized as a victim only in the context of criminal proceedings in Montenegro. If that was the case, then the question arose as to what rights were afforded the relatives of disappeared persons if no criminal proceedings were initiated. He would like to know whether the relatives of any disappeared persons had taken part in legal proceedings dealing with crimes against humanity committed in the territory of the former Yugoslavia and, if so, when a decision was expected in any of those proceedings that had not yet been concluded.

4. In view of the fact that the State party's laws made provision for the compensation of relatives of persons subjected to enforced disappearance, he wished to know what criteria were used in setting the amount of compensation and which authority was responsible for doing so. Was due weight given to victims' testimony in determining those amounts? He would appreciate it if the delegation could confirm whether, in some cases, victims had received compensation only after suing for damages in a civil suit. He wished to know whether the State party's laws provided for other types of redress, in addition to monetary compensation, and how the State party intended to ensure the fulfilment of all the rights to obtain reparation that were set out in article 24, paragraph 5, of the Convention and in international case law. What means were provided for under national law in order to give effect to the obligation set forth in article 24, paragraph 6, of the Convention? He recalled that, so long as the fate of a disappeared person had not been determined, the person was presumed to be alive. He wondered whether any provision in the State party's laws addressed the legal situation of disappeared persons whose fate was unknown and that of their relatives in areas such as social welfare, financial matters, family law and property rights without requiring the issuance of a declaration of death.

5. **Mr. López Ortega** said that he would appreciate clarification on the measures taken by the State party to enforce the prohibition on secret detention. Along those lines, he wished to know whether a standard operating procedure was used in police stations and other places of detention to notify relatives, or other designated persons, when a person had been taken into custody. There appeared to be a discrepancy between article 29 of the Constitution, which entitled persons deprived of their liberty to have a person of their choice "immediately" informed of their situation, and article 180 of the Code of Criminal Procedure, which stipulated that notification that a person had been taken into custody must be given within 24 hours at the latest. The Code of Criminal Procedure appeared to provide a lesser guarantee than the Constitution did,

and he would appreciate the delegation's views on the matter. Given the State party's acknowledgement that it was sometimes difficult to meet the 24-hour deadline, he wished to know why that was so and what the content of the proposed amendment to the relevant provision in the Code of Criminal Procedure was.

6. In addition, he would appreciate further details on how family members were informed of a prisoner's transfer from one police station, prison or other place of detention to another. Under existing regulations, how much time could elapse before an arrested person had to be provided with legal assistance? Did national laws relating to states of emergency or war provide for any restrictions to be placed on the rights set forth in articles 17 and 18 of the Convention? He wished to know whether the official registers and/or records of persons deprived of liberty to which reference was made in article 17, paragraph 3, of the Convention contained personal data on those persons and, if so, whether they included all the information listed in that provision. He would like to know whether there was a standard procedure for maintaining those registers, whether a central register was maintained and whether registers were also kept in juvenile detention centres and psychiatric institutions. Was there an oversight body which verified that the registers were filled in properly and what kind of penalties could be imposed on a civil servant who failed to do so? He would also like to know whether a prison inspectorate had been set up and, if so, what powers were conferred upon it and how frequently it conducted inspections.

7. The Committee would be interested to learn whether judges and prosecutors received specific training in relation to the Convention, whether such training was also provided to members of the police and armed forces, and whether forensic doctors received specialized training in forensic anthropology and the recovery of mortal remains. Information would be appreciated on the mandate, functions, powers, composition and work of the governmental Commission on Missing Persons and on the procedure used to hand over the remains of disappeared persons to their families, the number of corpses that had been identified and what was done with the mortal remains of those that had not been identified.

8. Women and children were particularly vulnerable to enforced disappearance and should be afforded extensive protection that was tailored to each specific situation. He wondered whether Montenegrin law provided for that type of specificity and what kinds of public policies were in place regarding the protection of women and children at risk of enforced disappearance. Lastly, with regard to the information provided on Montenegrin adoption procedures in paragraph 21 of the replies to the list of issues (CED/C/MNE/Q/1/Add.1), he would appreciate clarification on exactly what type of coercion or deceit could give rise to the annulment of an adoption and who had to have been subject to coercion or deceit in order for an annulment to be issued. If those were the only grounds for annulling an adoption, there would seem to be a need for additional provisions to deal with adoptions of children in cases of enforced disappearance. He wished to know whether there had been any instances in which adoptions had been annulled and, if so, how national law gave effect to article 25, paragraph 5, of the Convention, which provided that the best interests of the child must be the primary consideration and that the views of the child must be given due weight in all matters covered by article 25.

9. **Mr. Yakushiji** said that he would like to know whether there was any national law applying to deportation procedures that specifically prohibited non-refoulement in cases where persons would be at risk of enforced disappearance or whether that prohibition was established by means of the direct application of article 16 of the Convention. With regard to article 17 of the Convention, he would appreciate receiving details concerning the bill to amend the Code of Criminal Procedure and an explanation as to why one of the proposed amendments would eliminate the

requirement that family members were to be notified when a person had been taken into custody within 24 hours at the latest. He also wished to know why the requirement that persons deprived of liberty were to be brought before the Public Prosecution Service within 12 hours of their arrest was to be amended so as to extend the limit to 24 hours.

10. **Mr. Hazan** asked whether, during the armed conflicts that had taken place in the former Yugoslavia, the State party had kept a record of reports of missing children and of the possible whereabouts of such children.

11. **Ms. Galvis Patiño** said that the Montenegrin legal system apparently did not make a distinction between the rights of victims of human rights violations and those of victims of other criminal offences. If that was the case, and no express provision was made for the former, article 24 of the Convention could be invoked and applied directly by victims of human rights violations.

12. **Ms. Janina**, referring to the current unprecedented flow of migrants into Europe, said that she would be interested in hearing the delegation's views on the question as to whether, if the State party were one day to be faced with such an influx, its lack of autonomous legislation on enforced disappearance might influence the manner in which individual requests for asylum in Montenegro were examined and treated and might affect the State party's ability to handle them in a manner that was consistent with article 16 of the Convention.

The meeting was suspended at 10.35 a.m. and resumed at 11 a.m.

13. **Mr. Kojović** (Montenegro) said that the Montenegrin Constitution mirrored the principle of the prohibition of secret detention that was set forth in article 17 of the Convention. As described in paragraphs 91 to 94 of the State party's report (CED/C/MNE/1), a person could be deprived of liberty only for the reasons and following the procedure provided for by law. At the request of a person deprived of liberty, the competent authority must inform a person designated by him or her of the deprivation of liberty, and the person deprived of liberty had the right to have a defence attorney of his or her choosing present at interrogation.

14. The State party had reaffirmed its commitment to protect human rights and freedoms through the establishment of the Office of the Protector of Human Rights and Freedoms, which served as the State party's ombudsman and as the national mechanism for the protection of persons deprived of liberty from torture. The Protector cooperated directly with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Deputy Protector for the Prevention of Torture had been appointed in July 2012. The principle of the prohibition of secret detention was also affirmed in the Code of Criminal Procedure, which stipulated that detention could be ordered only under the conditions set forth in the Code and only if the same purpose could not be achieved by other means. The Code established that authorities taking part in criminal proceedings had a duty to proceed with exceptional urgency if the accused person was in detention and that detention was to be terminated as soon as the grounds for which it had been ordered ceased to exist. The Code also laid down rules governing the accommodation, rights, correspondence and visitation of persons deprived of liberty.

15. Referring to paragraphs 95 to 97 of the State party's report, he said that the President of the Court or a designated judge was required to visit detainees at least twice a year and could do so at any time to inspect detainees' living conditions, and any inmate whose rights were violated was entitled to compensation. Records were kept on all persons in detention. Those records contained, at the very minimum, the information stipulated by the Convention, and relatives and legal counsel could access that information on request. Registers were kept according to the standard rules of

procedure followed by all police stations and other agencies involved in handling detainees' cases. Oversight in that regard was performed by the Ministry of Justice and Ministry of the Interior.

16. Detainees could choose to inform a relative or other designated person of their situation immediately, and no detainee had ever waived that right. The strict enforcement of that provision was sometimes hindered, however, by the fact that electronic and other means of communication were not as developed in Montenegro as in many industrialized countries. Detainees usually informed the person of their choosing by telephone. The Code of Criminal Procedure also required the police and courts to assist detainees to arrange for legal counsel.

17. The discrepancy between the provisions of article 29 of the Constitution and article 180 of the Code of Criminal Procedure had been eliminated. The period within which a person must be brought before the public prosecutor had been increased from 12 to 24 hours for reasons of practicality. As Montenegro was a mountainous country with heavy snowfall and limited transport infrastructure, and since there were only two public prosecutor's offices that were authorized to handle major offences in the entire country, it was simply not always possible to reach a public prosecutor's office within half a day. If it took longer than 12 hours for the police to bring a person before a prosecutor, the reason for the delay had to be entered in the official record. Every effort was made to enforce the 48-hour time frame allowed for hearing appeals against a remand order, although that was sometimes impracticable; for example, some criminal cases involved large groups of 30 or more defendants and, in such instances, it was difficult if not impossible for all statements to be heard and the case files to be forwarded within 48 hours. Although the Committee might consider that time period to be excessive, the Government had drafted the law in consultation with experts from the Council of Europe. Foreigners who were deprived of their liberty could request that their embassy should be informed by telephone and in writing. Stateless persons could elect to inform an organization of their choosing.

18. Training on fundamental human rights was provided not only to judges and prosecutors, but also to the staff of all agencies involved in criminal proceedings, such as the police, courts and the prosecution service. He was unsure as to whether forensic doctors received specific training but would find out and inform the Committee in due course.

19. **Ms. Vukčević** (Montenegro) said that there were indeed cases in which families had brought charges in an effort to determine the fate of a disappeared person. In one case, a Montenegrin had disappeared while on business in Kosovo during the armed conflict of 1999. As the disappearance had occurred in another country and there were no indications that the perpetrator was Montenegrin, Kosovo had been responsible for the investigation. Nonetheless, the Montenegrin special prosecutor was able to collect information on the person and then sent a letter rogatory in order to determine whether further measures had been taken by the Kosovan authorities. If that country's authorities indicated that they had reason to believe that the perpetrator was on Montenegrin soil, then the Montenegrin authorities stood ready to take further action. They had also forwarded information provided by a relative to the Kosovan Government. In relation to a number of cases of Montenegrins who had disappeared during the war in Croatia and Bosnia and Herzegovina, the Montenegrin authorities had cooperated closely with the countries concerned and had provided all available information.

20. **Mr. Bošnjak** (Montenegro) said that, in addition to the definition of the term "victim" contained in the Criminal Code, a 2015 law on compensation for damages that had been adopted pursuant to the State party's ratification of the European Convention on the Compensation of the Victims of Violent Crimes defined a victim as

a person who had died or suffered severe injury or impaired mental or physical capacities as the result of having been the direct or unintended target of a crime, of having assisted the police or of having attempted to prevent the crime. Compensation for victims' families was regulated by the Law on Contracts and Torts. The courts gave priority to compensation cases, but the proceedings nonetheless were often lengthy in nature.

21. **Ms. Džabasan** (Montenegro) said that resolving cases of enforced disappearance was of vital importance not only for victims' families but also as an indicator of democratization. In 2007, given the complexity of the cases involving enforced disappearances that had occurred in the territory of the former Federal Republic of Yugoslavia, the Government had established the Commission on Missing Persons, whose mandate was outlined in paragraph 70 of the replies to the list of issues (CED/C/MNE/Q/1/Add.1). The Commission, which had assumed the duties that had once been assigned to previous missing persons commissions set up in the territory of Montenegro since 1991, was an interministerial body comprising representatives of the Red Cross of Montenegro, various ministries and the Refugee Bureau.

22. The procedure used by the Commission in creating databases on missing persons was in accordance with guidelines drawn up by the Red Cross and based on the territorial principle. Since Montenegro had not participated in the Yugoslav wars, the persons who had disappeared in the course of those conflicts had been residing in Bosnia and Herzegovina, Croatia or Kosovo. The exhumation of remains from individual and mass graves in those territories was carried out under the auspices of the Commission. Data on unidentified remains, however, were compiled not by the Commission but by the authorities of the neighbouring States concerned. The Commission met at least once every two or three months and maintained regular contact with the missing persons commissions of Bosnia and Herzegovina, Croatia and Kosovo. A protocol for cooperation with the Kosovan Commission on Missing Persons would be signed by the end of 2015. Other questions that had been asked about the Commission were answered in paragraphs 73 to 80 of the replies to the list of issues.

23. **Mr. Djukanović** (Montenegro), in answer to a question on social and child protection, said that Committee members might wish to refer to paragraph 113 of the replies to the list of issues. With regard to the annulment of adoptions, he drew the Committee's attention to paragraph 121 of the replies. As there was no record of adoptions concluded fraudulently or under coercion, no adoption procedure had so far been declared null and void on those grounds. The highest authority in adoption cases was the Ministry of Labour and Social Welfare. In international adoption proceedings, the Government ensured that all necessary guarantees were provided by the destination country.

24. The families of disappeared persons were entitled to a range of retirement, pension and insurance benefits, and a national fund had been set up to pay for those benefits. There were no refugees or economic migrants from Afghanistan or the Syrian Arab Republic in the asylum centre in Montenegro, where just two people were currently being housed.

25. **Mr. Kojović** (Montenegro) said that there had not yet been any cases in which the principle of non-refoulement had been applied. The authority responsible for such matters was the Ministry of Internal Affairs. Deportation orders were issued by the border police, and appeals against those orders could be filed with the Ministry and, at last instance, the Administrative Court. In accordance with the Aliens Act, no persons were to be expelled from Montenegro if there were reasonable grounds to believe that such a measure would put their lives at risk.

26. **Mr. Corcuera Cabezut** said that he would like to have clarification on the time limit for bringing persons deprived of their liberty before a public prosecutor. He would also appreciate information on efforts to provide comprehensive reparation to victims of enforced disappearance, as required by article 24, paragraph 5, of the Convention, and to incorporate into domestic law a definition of the term "victim" that was in line with article 24, paragraph 1, of the Convention. He also invited the delegation to comment on reports that the Commission on Missing Persons did not meet regularly and was not proactive in fulfilling its mandate.

27. He had not yet heard a reply to questions relating to article 24, paragraph 6, of the Convention. It was important that the exercise of the rights set forth therein should not be subject to the issuance of a certificate of presumption of death. With that in mind, the delegation should indicate whether steps had been taken to address the legal situation of disappeared persons whose fate had not been determined. That could be accomplished by, for example, establishing a procedure for obtaining a declaration of absence due to enforced disappearance.

28. **Mr. López Ortega** said that clarification would be appreciated as to whether cases involving war crimes heard by courts in the State party had concerned citizens of Montenegro, whether persons who had been granted compensation for having been deported had been residents of Montenegro and, if so, whether their property had been damaged. Was the delegation in a position to confirm that there were no persons missing in Montenegro as a consequence of the Yugoslav wars? He would also like to know whether the rights enshrined in articles 17 and 18 of the Convention could be suspended during a state of emergency or war and whether proper registers and records were kept in psychiatric wards and juvenile facilities.

The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.

29. **Mr. Kojović** (Montenegro) said that the Code of Criminal Procedure drew a distinction between deprivation of liberty, arrest and court-ordered detention. Police officers were required to bring detainees before a public prosecutor within 24 hours of arrest. If they failed to do so, the detainees would be released and could not be arrested again on the same grounds. Officers also had a duty to note down the date and time of arrest, and public prosecutors kept a record of each detainee's status. After the initial 24 hours, prosecutors had the power to extend the period of deprivation of liberty for a further 48 hours, at which point detainees would be released if no further action had been taken.

30. Pursuant to the revised Code of Criminal Procedure, police officers had an obligation to notify relatives of a person's arrest immediately. In almost all cases, detainees were able to contact a person of their choice. Although, under article 25 of the Constitution, the exercise of certain rights and freedom could be restricted to the extent necessary for the duration of a state of emergency or war, no such restriction had ever been applied with regard to detained persons' right to notify relatives of their detention. During a recent state of emergency, detainees had continued to enjoy all the rights provided for in articles 17 and 18 of the Convention.

31. Investigating judges could order that a person should be detained for a period of 30 days. That period could be extended for another two months pursuant to a request by the State prosecutor directed to the pretrial panel of the relevant court. In cases of criminal offences carrying a penalty of more than 5 years' imprisonment, the Supreme Court could extend the period of detention for up to another six months while an indictment was pending. If an indictment was not issued, the detainee in question must be released. Following the issuance of an indictment, detention could last for up to three years and came to an end when a decision was handed down at first instance. However, the decision to order a person's detention was reviewed by the pretrial panel

on a monthly basis until such time as an indictment became final and enforceable and once every two months thereafter. The Appellate Court was the competent body in the matter of the release of detainees.

32. As to the issue of compensation for damages and redress, it was important to note that there had not been any fighting in the territory of Montenegro during the conflict that had led to the break-up of the former Yugoslavia. All of the war crimes dealt with by the Montenegrin courts had been committed by Montenegrin nationals who were in Montenegro, with the exception of the Štrpci case, which had involved crimes committed in Bosnia and Herzegovina by nationals of that country and of Serbia. None of the Montenegrin nationals caught up in the incident had filed claims for compensation for property damage. One suspect had been arrested, prosecuted, convicted and imprisoned in Montenegro. With regard to damages awarded in deportation cases, the injured parties had been citizens of Bosnia and Herzegovina and had not owned any property in Montenegro. They had filed claims with the Montenegrin courts for compensation for material and non-material damages. The State had concluded settlements with all the complainants and had provided full compensation in line with the relevant international agreements. As to the Kaludjerski Laz case, the events in question had taken place on the border between Kosovo and Serbia. All the defendants had been acquitted, no property had been damaged, and the 13 complaints filed in that case had been withdrawn. The events involved in the Bukovica case had taken place on the border between Montenegro and Bosnia and Herzegovina. The Government of Montenegro had restored a number of buildings and replaced property that had been destroyed in Bukovica and had invited refugees from Bosnia and Herzegovina to return to their homes. The Morinj case had involved claims for non-material compensation filed by former prisoners of war. Final and enforceable judgements had been handed down in all of those cases. A further 65 cases remained pending. The Government of Montenegro offered assistance in the form of housing and social and welfare benefits to victims of crimes committed by persons unknown.

33. Juvenile detention centres and psychiatric facilities kept registers of persons residing in those institutions. Juvenile detainees were held in separate facilities from those in which adults were held. Offenders placed in psychiatric facilities were housed in designated wards, as necessary, and their treating physicians were required to report on their status to the relevant courts.

34. **Ms. Džabasan** (Montenegro) said that the Commission on Missing Persons had held six meetings since the beginning of 2015 and its members remained in contact on a daily basis. The Commission took part in the work involved in identifying human remains exhumed in Bosnia and Herzegovina, Kosovo and Croatia, bore the cost of their identification, transportation and burial, provided financial assistance to bereaved family members and paid the fees of forensic experts carrying out work on its behalf. No individual or mass graves containing the remains of persons listed as missing had been uncovered in Montenegro.

35. **Ms. Mašanović** (Montenegro), turning to questions regarding the legal status of disappeared persons, the financial aspects of legal procedures relating to inheritance and property ownership and the procedure for issuing a declaration of death, said that article 244 of the Family Law provided that a guardian could be appointed to protect the interests or property of persons who were absent, whose place of residence was unknown and who did not have a legal representative. Under the Law on Civil Contentious Procedure, the courts could declare persons to be dead if there had been no news of them for the past 5 years and if 60 years had passed since their birth, or there had been no news of them for the past 5 years and the circumstances of their disappearance made it likely that they were no longer alive, or if they had disappeared

during an armed conflict and there had been no news of them for 1 year from the date on which hostilities had ended.

36. **Mr. Corcuera Cabezut** said that he was impressed by the high level of the delegation of Montenegro, which included the Minister of Justice and which reflected the importance that the State party attached to the review process. He thanked the delegation for participating in such an open and constructive dialogue. A significant amount of time had been devoted to the discussion of national criminal legislation, and he was pleased that the delegation had expressed a willingness to raise the possibility of treating enforced disappearance as a separate offence in line with the Convention. The outcomes of a number of cases heard by the Montenegrin courts had been discussed in depth, and concern had been expressed at the lightness of some of the sentences handed down. The delegation had provided detailed information on the governmental bodies responsible for the implementation of the Convention, such as the special prosecutor's office. The dialogue had also focused on the importance of the search for disappeared persons. There had been a great deal of discussion of article 17 of the Convention and of the importance of ensuring that safeguards were put in place to protect individuals from the risk of enforced disappearance from the moment of deprivation of liberty. Additional information in writing on the time limits for bringing detainees before the public prosecutor and notifying relatives of their detention would be welcome. The dialogue had also covered reparation for victims of crimes of enforced disappearance, serious human rights violations and breaches of international humanitarian law. There was still some doubt as to whether a definition of the term "victim" that was in line with article 24, paragraph 1, of the Convention had been incorporated into national law, however. The civil procedure for the issuance of declarations of absence was in line with the provisions that had traditionally governed such procedures but failed to take into account the specific issue of the relatives of disappeared persons. The Committee had also referred to the need to introduce safeguards that would help to ensure that foreign nationals facing deportation or extradition did not become victims of enforced disappearance either during or after those processes.

37. **Mr. López Ortega** said that the delegation was to be congratulated on its efforts to reply to all of the questions posed by the Committee members. Over the past few years, Montenegro had made great strides in bringing its national legislation into line with international standards. He was confident that the State party would make every effort to implement the Committee's recommendations.

38. **Mr. Kaludjerović** (Montenegro) said that he wished to congratulate the country rapporteurs and the Committee members as a whole on the high quality of the dialogue. Any interaction with the treaty bodies was valuable in the context of the improvement of the human rights situation in Montenegro. He hoped that the Committee had gained a clear understanding of the advances made by Montenegro in implementing the Convention and of the challenges that remained. Many of the cases that had been discussed dated back to the break-up of the former Yugoslavia, and there had been no recent cases of enforced disappearance in Montenegro. The Government was fully committed to implementing the Committee's recommendations.

39. **The Chairperson** said that the delegation had made a valuable contribution to what had proved to be an open and fruitful dialogue.

The meeting rose at 1 p.m.